

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATHEAULEEN MASON, *et al.*,

Plaintiffs,

Case No. 05-73943

v.

Hon. John Corbett O'Meara

JENNIFER GRANHOLM, *et al.*,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO
VOLUNTARILY DISMISS AND ADJUSTING SCHEDULING ORDER**

Before the court is Plaintiffs' motion to voluntarily dismiss their injunctive relief claims, filed November 18, 2008. Plaintiffs' attorneys contend that they cannot adequately represent them at trial, which is scheduled for December 2, 2008, because Defendants have named twenty-seven previously unidentified witnesses in the joint final pretrial order. At the final pretrial conference on November 12, 2008, this court expressed its strong inclination to proceed with the trial as scheduled, given the age and procedural posture of this case.

Upon reconsideration, the court finds that the listing of twenty-seven previously unidentified witnesses on the joint final pretrial order by Defendants will create an undue hardship on and unfair prejudice to Plaintiffs. Defendants' failure to timely identify these witnesses is in contravention of Local Rule 16.2(b)(8) and this court's scheduling order. These previously unidentified witnesses may not testify at trial, absent a compelling showing by Defendants that the failure of specific witnesses to testify will unduly prejudice Defendants and create an unjust result. It is Defendants' burden to demonstrate that the testimony of any of these

witnesses should be considered by the court and will not prejudice Plaintiffs.

In addition, the court is aware that Magistrate Judge Scheer granted Plaintiffs' latest motion to compel discovery on November 18, 2008, providing Defendants some additional time to respond to Plaintiffs' requests. As a result, to avoid further prejudice to Plaintiffs, the court will adjourn the bench trial on Plaintiffs' claims for injunctive relief until **January 20, 2009, at 9 a.m.**

SO ORDERED.

s/John Corbett O'Meara
United States District Judge

Date: November 20, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, November 20, 2008, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager